IN THE SUPREME COURT OF THE UNITED STATES.

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IN THE MATTER

OF

The Petition of CHARLES PALLISER, for the writ of Habeas Corpus.

ORIGINAL.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE PETITION.

ROGER FOSTER,

Attorney and Counsel for Charles Palliser, Petitioner,

206 and 208 BROADWAY,

New York.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

In the Supreme Court of the United States.

In the Matter of The Petition of Charles Palliser for the writ of *habeas corpus*.	Original.

Memorandum in Support of Motion for Leave to File Petition.

STATEMENT.

The petition shows that Charles Palliser, a British subject, residing in the City of New York, is about to be removed into the District of Connecticut, upon the charge of an offense against the postal laws. It appears that the alleged offense consists in the writing and mailing, in the City, County and State of New York, of a letter which is set out in full in the petition.

I.

THIS COURT HAS JURISDICTION OF THE PETITION.

The power expressly granted by U. S. R. S., Sec. 751. The arrest of the petitioner has been under color of the postal laws of the United States. It is also in

violation of Article III. of the Constitution of the United States, which provides that the trial of a crime shall be held in the State where the said crime shall have been committeed; and in violation of the Sixth Amendment of the Constitution. The facts: that a previous application for a writ of *habeas corpus* has been made to the Circuit Court and denied; and that an application to advance the appeal taken from such order of the Circuit Court has been subsequently here made and denied; afford a ground for the interference by this Court by an original writ. If the rules do not permit an advancement of the appeal below, the Court will issue an original writ in favor of the liberty of the citizen. This case is consequently different from Wales vs. Whitney, 114 U. S., 564; and the other cases holding that ordinarily the Supreme Court will refuse to interfere by *habeas corpus* with a case in which an application may be made to the Circuit Court for relief by such a writ.

It was held,

In re Reinitz, 39 Fed. R., 204;

that the existence of a decision in another case by an inferior State Court adverse to the contention of the petitioner, was a sufficient reason for an interference of the Circuit Court by *habeas corpus*, in a case of which such State Court had jurisdiction. The same principles regulate the exercise by *habeas corpus* of the jurisdiction of the Supreme Court over cases within the jurisdiction of the Circuit Courts.

Moreover, we are informed that, in a recent case arising in Colorado or some other western State or Territory, an original writ was granted to a prisoner in custody in a State or Territorial Court. It cannot be, that there is not some way in which a person, deprived of his liberty and about to be dragged from his home into a foreign State for trial can have an immediate hearing and adjudication of his rights by means of a writ of *habeas corpus*. If the rules of this Court do not allow im-

mediately the advancement and hearing as a motion of an appeal in such a case from a decision of the Circuit Court; then it must certainly be its duty to issue the original writ. Otherwise the guarantee of the writ by the constitution would be rendered useless. The writ would be practically snspended in time of peace, when the public safety did not require it.

II.

THE FACT, THAT THE PRISONER HAS BEEN SEIZED BY HIS BAIL, AND IS NOT YET IN THE CUSTODY OF THE MARSHAL, IS NO REASON WHY THE WRIT SHOULD BE DENIED.

If the charge is valid, and under it the petitioner can be tried in another State from that where the letter was written and mailed; his bail has a perfect right to seize him and deliver him into the custody of the Marshal for the District of Connecticut.

There are dicta to the effect that when a person is released on bail and his bail has not seized him, but allows him to remain at large, he is not entitled to a writ of *habeas corpus*, because he is not restrained of his liberty.

As to the soundness of these dicta, there is considerable doubt; and there is no decision on the point which we have been able to find, after much search. But in this case the prisoner is not at large. He has been seized by his bail and is actually in the custody of such bail, deprived of his liberty and about to be removed into a foreign State for trial. He is therefore clearly entitled to the benefit of the writ.

III.

THE MOTION FOR LEAVE TO FILE THE PETITION SHOULD BE GRANTED, THE PETITION ORDERED ON FILE, AND A WRIT OF *HABEAS CORPUS* DIRECTED TO BE ISSUED TO GEORGE PALLISER, DIRECTING HIM TO PRODUCE THE BODY OF CHARLES PALLISER BEFORE THIS COURT, AND MAKE A RETURN OF THE REASONS WHICH ARE ALLEGED TO JUSTIFY HIS IMPRISONMENT, UPON AN EARLY DAY DURING THE PRESENT TERM.

Respectfully submitted,

ROGER FOSTER,

Of Counsel for Charles Palliser.

The Supreme Court of the United States.

CHARLES PALLISER,
Appellant,

AGAINST

THE UNITED STATES OF AMERICA, and JOHN A. SHIELDS, individually and as United States Commissioner; and MARTIN McMAHON, individually and as Marshal of the United States for the Southern District of New York,
Respondents.

BRIEF FOR APPELLANT.

Statement.

This is an appeal by Charles Palliser from an order of the Circuit Court of the United States for the Southern District of New York dismissing a writ of *habeas corpus* previously granted upon his application, and remanding him to the custody of the Marshal of the United States for that district. The appellant was confined upon a warrant issued by the United States Commissioner, upon a complaint charging him with a violation of the postal laws. The complaint is as follows:

"UNITED STATES OF AMERICA, }
Southern District of New York, } ss. :

JOHN H. BARIO, being duly sworn, deposes and says that he is inspector of the Post-Office Department; that on October 23d, 1888, Charles Palliser, of the City and State of New York, then and there doing business "under the name and style of Palliser, Palliser & Co., at Old Lyme, in the County of New London, in the State and District of Connecticut, with force and arms unlawfully and willfully did tender to one W. R. De Wolfe, who then and there was and thereafter continued to be, until the 4th day of March, 1889, a postmaster of the United States at a certain post-office known as Black Hall, in said County of New London, a certain contract in the words and figures following :

'NEW YORK, October 23, 1888.

Post-master, Black Hall, Conn.,

DEAR SIR—We desire in each county a place through which to send out mail matter, as we want to reach every business man, mechanic and real estate man in every State by circular.

If we ship to you from our printing department located in the County in your State, say 5,000 or 10,000 circulars in envelopes, and each addressed, will you give the same your careful attention, sending out daily 50 to 100 during the coming months until they are all out and then render us statement of same with account of stamps used, and we will remit.

We are doing this at other general store post-offices in adjoining counties to yours, and it is perfectly legitimate; and we await your reply in addressed and stamped envelope enclosed herewith, as, if you cannot attend to same, we must at once send elsewhere.

Yours very truly,

PALLISER, PALLISER & CO.'

" with the intent of him, the said Palliser, to induce him, the said De Wolfe, as such Postmaster, to do certain acts in violation of his lawful duty as such postmaster, that is to say, to sell him, the said Palliser, postage stamps otherwise than for cash, to wit, upon the credit of said Palliser, against the peace of the United States and contrary to the statutes thereof in such cases made and provided. Deponent further says that said Charles Palliser is now within the Southern District of New York.

JOHN H. BARIO.

Subscribed and sworn to before me this 27th day of September, 1889.

JOHN A. SHIELDS,
U. S. Commissioner.

[Endorsed:] U. S. vs. Palliser. Afft. filed Sept. 27th, 1889."

The application before the Commissioner was for the purpose of obtaining a warrant to remove the appellant into the District of Connecticut for trial. The evidence taken before the Commissioner tended to prove that a letter such as is set out in the complaint was mailed by the appellant in the City of New York, addressed to a postmaster in Connecticut. (See page 6 of Transcript of Record.) The Court will observe that, although but one such offense was charged in the complaint, evidence was given tending to prove about sixty similar offenses. The statute of the United States which it is claimed Mr. Palliser violated is Sec. 5451 of the Revised Statutes, as follows: " Sec. 5451. " Every person who promises, offers, or gives, or causes " or procures to be promised, offered, or given any money " or other thing of value, or makes or tenders any con- " tract, undertaking, obligation, gratuity, or security for " the payment of money, or for the delivery or convey- " ance of anything of value, to any officer of the United

"States, or to any person acting for or on behalf of "the United States in any official function, under or "by authority of any department or office of the Gov- "ernment thereof, or to any officer or person acting "for or on behalf of either House of Congress, or of "any committee of either House, or both Houses "thereof, with intent to influence his decision or action "on any question, matter, cause, or proceeding which "may at any time be pending, or which may by law "be brought before him in his official capacity, or in "his place of trust or profit, or with intent to influence "him to commit or aid in committing, or to collude in, "or allow any fraud, or make opportunity for the com- "mission of any fraud on the United States, or to in- "duce him to do or omit to do any act in violation of "his lawful duty, shall be punished as prescribed in "the preceding section."

The appellant contended, first, that the complaint did not set out any crime under that statute or any other statute; and, second, that if it did set out such a crime, such crime is only triable in the Southern District of New York, where the letter was mailed.

"The writ of *habeas corpus* was made returnable at a Stated Term of the Circuit Court of the United States for the Southern District of New York." The Judge who held that Court, however, in his opinion stated that he considered that he had no authority to try a criminal cause at such a Stated Term; that this application for *habeas corpus* was a criminal cause; and, consequently, although apparently of the opinion that the facts proven did not constitute a crime, yet dismissed the writ. The order of dismissal was entered "at a Stated Term of the Circuit Court of the United States for the Southern District of New York." From this decision, we have taken an appeal, which was allowed by the Judge who held such Stated Term.

The assignment of errors which is attached to the return is as follows:

THE SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF THE PETITION

OF

CHARLES PALLISER,
Appellant.

Assignment of Errors.

Afterwards, to wit, on the third Friday of January, in the year of our Lord eighteen hundred and ninety, at the October Term for eighteen hundred and eighty-nine of the Supreme Court of the United States, at the Capitol, in the City of Washington and District of Columbia, comes the said Charles Palliser, by Roger Foster, his attorney, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

I. That the matters charged in the complaint against Charles Palliser do not constitute a crime by the common law or under any statute of the United States.

II. That the matters, testimony tending to prove which, was given before John A. Shields, United States Commissioner, in the above-entitled matter do not constitute a crime by the common law or under any statute of the United States.

III. That the matters charged as a crime against Charles Palliser, as appears by the testimony before John A. Shields, United States Commissioner, occurred and were committed, if they ever occurred or were committed, within the Southern District of New York, and not within the District of Connecticut; and that by the Sixth Amendment to the Constitution of the United States, said Palliser cannot be tried upon said

charges in the District Court of the United States for the District of Connecticut.

IV. That the said Commissioner had no jurisdiction to issue a warrant for the arrest of Charles Palliser.

V. That the Marshal of the United States had no authority to arrest or detain Charles Palliser.

VI. That the Circuit Court of the United States for the Southern District of New York erred in not discharging the said Charles Palliser upon the return of the writ of *habeas corpus* herein.

Wherefore, the said Charles Palliser prays that the order of the said Circuit Court of the United States for the Southern District of New York be reversed, and the said Circuit Court of the United States for the Southern District of New York be ordered to enter an order directing the discharge of the said Charles Palliser from custody.

ROGER FOSTER,
Attorney for Appellant,
206 and 208 Broadway,
New York.

Point I.

THIS COURT HAS JURISDICTION OF THE APPEAL.

1. THE SUPREME COURT HAS JURISDICTION OF AN APPEAL FROM A DECISION BY A CIRCUIT COURT UPON AN APPLICATION FOR A WRIT OF HABEAS CORPUS OR UPON SUCH WRIT WHEN ISSUED.

U. S. R. S., §§ 763 and 764, as amended March 3, 1885, 23 Stat. L., p. 437.
Wales vs. Whitney, 114 U. S., 564, 565.
Carper vs. Fitzgerald, 121 U. S., 87.

2. THE CIRCUIT COURT TO WHICH THE WRIT IN THIS CASE WAS RETURNED HAD JURISDICTION TO HEAR AND DETERMINE THE SAME.

A. SUCH A TERM OF THE CIRCUIT COURT HAD JURISDICTION TO ENTERTAIN CRIMINAL CAUSES.

U. S. R. S., § 658 :

"The regular terms of the Circuit Courts shall be held "in each year at the times and places following; but "when any of said dates shall fall on Sun- "day the term shall commence on the following "day. * * * In the Northern District of New "York, at Canandaigua, on the third Tuesday in "June; at Albany on the second Tuesday in October; "and when the term appointed to be held at Albany is "adjourned, it shall be adjourned to meet at the same "place on the third Tuesday in January; and when "said adjourned term is adjourned, it shall be ad- "journed to meet in Utica on the third Tuesday in "March. *The said adjourned terms shall be held for the "transaction of civil business only.* In the Southern "District of New York at the City of New York on the "first Monday in April and the third Monday in Oc- "tober; and for the trial of criminal causes and suits "in equity, on the last Monday in February; and ex- "clusively for the trial and disposal of criminal cases "and matters arising and pending in said Court on the "second Wednesday in January, March and May, on "the third Wednesday in June and on the second "Wednesday in October and December: *Provided*, That "the holding of any of the last mentioned terms for "criminal business shall not dispense with nor affect "the holding of any other term of the Court at the "same time, and that the pending of any other term "of the Court shall not prevent the holding of any of "the said terms for criminal business."

The inclusion in the clause relating to the Northern

District of a prohibition against the transaction of criminal business at certain terms, and the omission of any such prohibition in the clause relating to the holding of terms in the Southern District of New York, shows that it was not the intention of Congress to deprive any term held in the Southern District of New York of jurisdiction over criminal business. *Expressio unius est exclusio alterius.* Otherwise, if the contention of the learned Circuit Judge were correct, great injustice might constantly be done. To deprive a party unlawfully in prison of a writ of *habeas corpus*, from the decision upon which an appeal to the Supreme Court of the United States would lie—until the holding of a criminal term of the Court—might frequently keep him in confinement for a long period of time and thus defeat the purpose of Congress and impair the remedial character of the writ. It was the intention of Congress to provide for a summary and expeditious hearing of applications of this nature, both below and upon appeal.

In Roberts vs. Reilly, 116 U. S., 80, 92 to 93, this Court said, speaking through Mr. Justice MATTHEWS, concerning the provisions for appeals in proceedings under a writ of *habeas corpus* :

"This statutory provision evidently contemplates the "summary character of proceedings under the writ of "*habeas corpus* as not admitting, in favor of the lib- "erty of the citizen, the delays usually and necessarily "attending ordinary litigations between parties, and "confers upon the judicial tribunal, or the Judge "hearing the application and making the order which "is the subject of the appeal, discretion to send up "the cause to the appellate tribunal under such regu- "lations and orders as may seem best adapted to se- "cure the speediest and most effective justice. This "harmoniously adapts the practice in direct appeals "in such cases under these sections of the Revised "Statues to that exercised independently of these "provisions, by means of the original writ of *habeas*

" *corpus* with the aid of a writ of *certiorari*, to bring " up the record of the proceedings to be reviewed."

B. AN APPLICATION FOR A WRIT OF HABEAS CORPUS AND THE PROCEEDINGS THEREUPON, ARE CIVIL, NOT CRIMINAL, PROCEEDINGS.

In *Ex parte*, Tom Tong, 108 U. S., 556, 559–560; this Court said, speaking through Chief-Justice WAITE: "The writ of *habeas corpus* is the remedy which the " law gives for the enforcement of the civil right of " personal liberty. Resort to it sometimes becomes " necessary, because of what is done to enforce " laws for the punishment of crimes, but the judicial " proceeding under it is not to inquire into the criminal " act which is complained of, but into the right to " liberty notwithstanding the act. Proceedings to en- " force civil rights are civil proceedings, and proceed- " ings for the punishment of crimes are criminal pro- " ceedings. In the present case, the petitioner is held " under criminal process. The prosecution against " him is a criminal prosecution, but the writ of *habeas* " *corpus* which he has obtained is not a proceeding " in that prosecution. On the contrary, it is a new suit " brought by him to enforce a civil right which he " claims as against those who are holding him in cus- " tody, under the criminal process. If he fails to " establish his right to his liberty, he may be detained " for trial for the offense; but if he succeeds, he must be " discharged from custody. The proceeding is one insti- " tuted by himself for his liberty, not by the government " to punish him for his crime. This petitioner claims " that the Constitution and a Treaty of the United States " gave him the right to his liberty, notwithstanding the " charge that has been made against him, and he has ob- " tained judicial process to enforce that right. Such a " proceeding on his part is, in our opinion, a civil proceed- " ing, notwithstanding his object is, by means of it, to get " released from custody under a criminal prosecution."

This was approved and followed in

Ex parte Cota, 110 U. S., 385;
and Kurtz vs. Moffitt, 115 U. S., 487, 494.

3. THE ORDER FROM WHICH THE APPEAL IS TAKEN WAS THE ORDER OF THE COURT, NOT THE ORDER OF THE JUDGE.

Its caption is "At a stated term of the Circuit Court of the United States for the Southern District of New York, held in the Post-office Building, in the City, County and State of New York, on December 3d, 1889. Present—Hon. E. HENRY LACOMBE, Circuit Judge;" and it was filed and entered in the Clerk's office.

The writ of *habeas corpus* was, by its terms, returnable before "a Stated Term of the Circuit Court of the United States for the Southern District of New York, to be held in the Post-office Building, in the City, County and State of New York," &c. The case was argued in open Court during the pendency of a stated term thereof, which commenced on the third Monday of October, and was still pending unadjourned. No criminal term of the Court was then in session. The succeeding criminal term was to be held on the following week, the second Wednesday of December.

This order differs *toto cælo* from the order in

Carper vs. Fitzgerald, 121 U. S., 87, 88.

The writ there was made returnable "before the Hon. HUGH L. BOND, Judge of our Circuit Court of the United States for the Eastern District of Virginia, sitting at the United States Court House, in Baltimore, Maryland."

The order here is in the same form as those orders, which were held to be Court orders and not Judge's orders in

Heishon vs. Knickerbocker Life Insurance Co., 77 N. Y., 278;
Elwood vs. Roof, 82 N. Y., 428.

The test to distinguish a Court order from a Judge's order which was applied by Chief-Justice MARSHALL and his associates was whether the motion was argued in open Court or at a Judge's chambers.

Ex parte Bollman and Swartwout, 4 Cranch, 75, 95, 106.

The opinion of Judge LACOMBE that the proceeding was before him as a Judge and not before the Circuit Court, is immaterial. The language of the writ and order determines the nature of the proceeding. Were it otherwise, the remedy by appeal could always be prevented by the action of the Circuit Judge. We could have enforced by mandamus our right to have the writ returnable at the Circuit Court, had it not been so made by its terms. After argument, we could have enforced by mandamus the entry of the order which denied our application in the form of a Court order, as is its present form. We could have enforced by mandamus our right to an appeal had not the Circuit Judge allowed it. We cannot, however, obtain mandamus to correct or otherwise review his opinion. We are not bound by that. *Quod factum, non quod dictum est inspicitur.*

Point II.

A PRISONER HELD UNDER A WARRANT ISSUED UPON A COMPLAINT WHICH DOES NOT ALLEGE FACTS CONSTITUTING A CRIME CAN ALWAYS BE DISCHARGED BY A WRIT OF HABEAS CORPUS BEFORE JUDGMENT OF CONVICTION.

The leading case on this point is

Ex parte Bollman and Swartwout, 4 Cranch, 75, 136;

where prisoners arrested on a charge of treason and proved to have assisted Aaron Burr in his conspiracy were discharged by the Supreme Court of the United States upon the ground that the facts proved did not constitute treason; and when it was claimed that the proved facts, if they did not constitute treason, did constitute a crime of an inferior grade, the Court refused to consider that question when the arrest was under a charge of treason.

Similar cases where the Courts have, upon *habeas corpus*, considered the criminality of acts charged against the petitioners are:

United States vs. Hamilton, 3 Dallas, 17;
Ex parte Burford, 3 Cranch, 448;
Ex parte Watkins, 7 Peters, 568;
Ex parte Jenkins, 2 Wallace C. C., 521, 528;
In re Martin, 5 Blatchford, 303;
U. S. vs. Rogers, 23 Fed. R., 658;
In re Cross, 20 Fed. R., 824.

Point III.

THE SENDING OF THE LETTER DESCRIBED IN THE COMPLAINT DID NOT CONSTITUTE A CRIME, EVEN IF IT WERE UNLAWFUL FOR THE POSTMASTERS TO SELL POSTAGE STAMPS UPON CREDIT.

The sending of such a letter is claimed to constitute an offense under U. S. R. S., § 5451, as the tendering of a contract for the payment of money to a person acting for or on behalf of the United States in an official function, with intent to influence him to commit or aid in committing or to induce him to do or omit to do an act in violation of his lawful duty. The entire section is as follows:

"SEC. 5451. Every person who promises, offers or "gives, or causes or procures to be promised, offered or "given any money or other thing of value, or makes or "tenders any contract, undertaking, obligation, gratuity "or security for the payment of money, or for the de- "livery or conveyance of anything of value to any officer "of the United States, or to any person acting for or on "behalf of the United States in any official function, un- "der or by authority of any department or office of the "Government thereof, or to any officer or person acting "for or on behalf of either House of Congress, or of any "committee of either House, or both Houses thereof, "with intent to influence his decision or action on any "question, matter, cause or proceeding which may at any "time be pending, or which may by law be brought be- "fore him in his official capacity, or in his place of trust "or profit, or with intent to influence him to commit or "aid in committing, or to collude in or allow any fraud, "or make opportunity for the commission of any fraud "on the United States, or to induce him to do or omit "to do any act in violation of his lawful duty, shall be "punished as described in the preceding section."

This section is described by the revisers of the statutes as a section relating to "bribery of any United States officers." It immediately follows two other sections which respectively provide for the punishment of "bribery of a Judge and bribery of a member of Congress." The revisers, at the foot of the statute, refer to U. S. R. S., § 5501, which is described by the revisers as providing for "punishment of United States officers respecting bribes, &c." These sections should be read together. They are evidently framed for the punishment of bribery and nothing else. It is admitted by the prosecution and the respondents that only bribery can be punished under this statute; and that Mr. Palliser cannot be held unless this letter was the offer of a bribe to a postmaster.

The chain of reasoning through which it is sought to

establish that he attempted to bribe the postmaster is as follows: This postmaster was a fourth-class postmaster, and was paid by the Government by the allowance to him in his quarterly accounts of the entire amount of the stamps sold by him not in excess of fifty dollars, and on the next one hundred dollars or less per quarter sixty per cent. of the amount sold. (See 22 Statutes at Large, page 602, Act of March 3, 1883, Section 2). It is claimed that by this letter Mr. Palliser offered to send the postmasters a certain number of circulars in case they would agree to sell him that same number of one cent postage stamps upon credit. The sale of postage stamps upon credit, it is claimed, is made a misdemeanor by the Act of June 17th, 1878 (20 Statutes at Large, 141). As to this, see Point III. By acceding to Mr. Palliser's request, the postmasters increased their official profits. But he would have been at perfect liberty to have bought those postage stamps from them for cash on delivery, either by himself or through any other person who might loan him the money with which to do so, and thus to similarly increase the compensation of the postmasters. So, the United States has lost nothing by this transaction. A request to an official to aid the party making the request in the commission of an unlawful act through which both will gain a profit is not an offer of a bribe.

1. THE CIRCULAR CONTAINS NO OFFER UPON THE PART OF MR. PALLISER TO SEND THE CIRCULARS IN CASE THE POSTMASTERS SHOULD AGREE TO SELL THE STAMPS FOR THEM ON CREDIT.

It merely says: "we ship to you, &c., a certain number of circulars, will you send them out on credit?" Had the transaction been legitimate, as we submit it was, and a postmaster had written accepting Mr. Palliser's alleged proposition, no contract would have existed between them. The offer was too indefinite.

Even, therefore, if the construction put by the Government upon the transaction contemplated were correct, Mr. Palliser would still be free from crime and entitled to his discharge.

2. THE REQUEST OF A PUBLIC OFFICER TO AID THE PARTY MAKING THE REQUEST IN THE PERFORMANCE OF AN ACT IN VIOLATION OF SUCH OFFICER'S DUTY, THROUGH WHICH EACH WILL MAKE A PROFIT, IS NOT THE OFFER OF A BRIBE.

The case is exactly the same as if Mr. Palliser had approached the postmaster and orally asked him to sell him a single one cent stamp and to trust him for payment until the next day.

Bribery consists in the giving to an officer of something in addition to his legal fees, in order to induce him to violate his official duty, by improperly favoring the briber. The solicitation of an act by which the officer will gain profit through the receipt of his legal fees is not the offer of a bribe.

Blackstone, in his Commentaries, Vol. 4, page 139, thus describes bribery: "Bribery is the next species of offense against public justice, which is when the Judge, or other person concerned in the administration of justice, takes any *undue* reward to influence his favor in his office." This definition has been repeatedly approved. See, for example:

Simpson vs. Ysend, L. R., 4 Q. B., 626;
Rex vs. Beale, cited in Rex vs. Gibbs, 1 East., 173, 183; and also the different text books on Criminal Law.

To illustrate, if Mr. Palliser had promised the postmaster some extra reward in consideration of the sale of stamps on credit, such as more than the legal price for such stamps; or had promised to give the postmaster a contract to perform work for him of another kind, for which additional payment would be made:

the appellant might have committed an offense within the meaning of the statute.

See

Harding vs. Stokes, 1 M. & W., 354.

The solicitation to commit a misdemeanor has never been considered a crime: and the weight of authority is in favor of the view that solicitation to commit a felony is not a crime unless accompanied by some overt act; when perhaps the solicitor might be indicted as a conspirator or as an accessory before the fact.

In People vs. Smith 28 Hun, (N. Y.), 626–627; the General Term of the New York Supreme Court in New York County, speaking through Judge DANIELS, said:

"The defendant was convicted of violating the Excise "Laws by making a sale of beer in quantity less than "five gallons, without license, to the complaining wit- "ness. * * * This witness in no manner participated "in the act declared by the statute to be an offense. "That was made out by the sale itself without license, "and the person making the sale is the only one de- "clared by the law to be criminal. The purchaser has "been subjected to no criminal accountability whatso- "ever, and by the mere purchase he could not be a "participant in the act which the statute has declared to "be an offense. That was performed wholly and ex- "clusively by the defendant, for she, unaided by the "purchaser, acted alone in making the sale. An accom- "plice is a person involved either directly or indirectly "in the commission of the crime. To render him such, "he must in some manner aid, or assist, or participate "in the criminal act, and by that connection he becomes "equally involved in guilt with the other party by "reason of the criminal transaction. This witness in- "curred no such relation to the offense committed, and, "therefore, was not an accomplice within the meaning of "this section of the Code. A point similar to this arose "in *Com. vs. Willard* (22 Pick., 476), and *Com. vs. Down-*

" *ing* (4 Gray, 29), and it was held by the Court pro-
" nouncing these decisions that such a purchaser was not
" an accomplice. A similar principle was also observed
" and applied in *Campbell vs. Com.* (84 Penna. R., 187);
" *State vs. McKean* (36 La., 343); *Trustees, etc., vs O'Mai-*
" *ley* (18 Ill., 407); *Smith vs. State* (37 Ala., N. S.,
" 472); *People vs. Farrell*, (30 Cal., 316)."

In People vs. Emerson, 6 Connoly's Criminal Reports 157; N. Y. Supreme Court, Oyer and Terminer, held by LAWRENCE, J.; the defendant was indicted for the sale of lottery tickets to Burdell, a defaulting clerk of the well-known legal firm, Shipman, Barlow, Larocque & Choate, who had thus squandered his stolen money. The only witness for the prosecution was Burdell. It was claimed that, Burdell being an accomplice, his testimony needed corroboration before the conviction of the defendant could be obtained. The objection was, however, overruled upon the ground that although the statute forbade the selling of lottery tickets, the seller only and not the purchaser was liable and could be punished for the commission of the offense. So, too, it has been held that the woman who is abducted is not the accomplice of the abductors.

People vs. Powell, 4 Connoly's Criminal Reports, 585.

It has been held that the woman upon whom an abortion is performed is not an accomplice of the man who commits the abortion.

Dunn vs. People, 29 N. Y., 523.

Bishop on Criminal Law, Sec. 657:

" Lighter Misdemeaners Distinguished.—But when
" we ascend among the lighter misdemeanors, we find
" some differences occasioned by the smaller degree of
" blameworthiness involved in an offense, or the special
" terms of the statute respecting it. The cases are neither
" sufficiently numerous nor uniform to enable an author

" to state precisely and fully what the doctrine of the " courts is on this subject; but the principle is reasonably " plain, as follows: If the terms of a statute distinctly " limit the penalty to persons who participate in the act " only in a certain way, those terms furnish the rule of " the Court. Or, if the expression is general, then, if the " offence is of minor turpitude, and especially if the thing " is only *malum prohibitum*, the courts, by construction, " will limit its operation to those persons who are more " particularly within the reason or express words of the " enactment. *And there are misdemeanors of such a " nature, and so small in turpitude, that even a person " present and lending the support of his will to the commis- " sion of the act is, nevertheless, not punishable. Thus* ——

" Sec. 658. Retailing Liquor.—Under the statute " making it penal for unlicensed persons to retail intoxi- " cating liquor, it is generally held that one who, as pur- " chaser, lends the concurrence of his will to what is " done, and tempts the seller with his money, and is " present encouraging him, is still not liable to punish- " ment."

Citing,

Commonwealth vs. Willard, 22 Pick. (Mass.), 476.
State vs. Hopkins, 4 Jones, N. C., 305.
Rawles vs. State, 15 Texas, 581.

The same rule has been applied to felonies.

In

Regina vs. Williams, 1 C. & K., 589;

the prisoner had delivered poison to B, and desired him to put it in C's beer. It was held that the prisoner could not be indicted for an attempt to administer poison to C.

In

Stabler vs. Commonwealth, 95 Pa. St., 318;

the defendant had asked M. to put poison in W.'s spring.

It was held that the prisoner could not be held and indicted for an attempt to administer poison to W.

See Stampler vs. Commonwealth, 7 Bush (Ky.), 612.

Point IV.

THE SALE OF POSTAGE STAMPS UPON CREDIT IS NOT A VIOLATION OF A POSTMASTER'S OFFICIAL DUTY.

The Government is amply protected by his bond.

See U. S. R. S., Sec. 3834.

The only statute upon which the prosecution rests its claim is the Act of June 17, 1878, 20 Statutes at Large 141 :

" And no Postmaster of any class, or other per-
" son connected with the postal service, entrusted with
" the sale or custody of postal stamps, stamped enve-
" lopes or postal cards, shall use or dispose of them in
" payment of debts or in the purchase of merchandise or
" other salable articles or pledge or hypothecate the
" same or sell or dispose of them except for cash, or sell
" or dispose of postage stamps or postal cards for any
" larger or less sum than the values indicated on their
" faces, or sell or dispose of stamped envelopes for a
" larger or less sum than is charged therefor by the post-
" master's department for like quantities."

It is claimed by the prosecution that the phrase prohibiting the sale of postage stamps " except for cash " is a prohibition against the sale of postage stamps upon credit.

This is a penal statute and must be construed strictly.

The Schooner Enterprise, 1 Paine, 32:

Mr. Justice LIVINGSTON said: "Although ignorance of the existence of a law be no excuse for its violation, yet if this ignorance be the consequence of an ambiguous or obscure phraseology, some indulgence is due to it. It should be a principle of every criminal code, and certainly belongs to ours, that no person be adjudged guilty of an offense unless it be created and promulgated in terms which leave no reasonable doubt of their meaning. If it be the duty of a jury to acquit where such doubts exist concerning a fact, it is equally incumbent on a Judge not to apply the law to a case where he labors under the same uncertainty as to the meaning of the Legislature. If this be involved in considerable difficulty from the use of language not perfectly intelligible, unusual circumspection becomes necessary, especially if the consequences be so penal as scarcely to admit of aggravation. When the sense of a penal statute is obvious, consequences are to be disregarded; but if doubtful, they are to have their weight in its interpretation. It will at once be conceded that no man should be stripped of a very valuable property, perhaps of his all—be disfranchised and consigned to public ignominy and reproach, unless it be very clear that such high penalties have been annexed by law to the act which he has committed. If these principles be correct, as they are deemed to be, a court has no option where any considerable ambiguity arises on a penal statute, but is bound to decide in favor of the party accused. 'It is more consonant to the principle of liberty,' says an eminent English Judge, 'that a court should acquit when the Legislature intended to punish, than that it should punish, when it was intended to discharge with impunity.'"

This language was approved in Commonwealth vs. Standard Oil Co., 101 Pa. St., 119, 150.

In Commonwealth vs. Martin, 17 Mass., 359, 362;

Chief Justice PARKER, said: "If a statute creating or

increasing a penalty, be capable of two constructions, undoubtedly that construction which operates in favor of life or liberty, is to be adopted."

See also :

U. S. vs. Sheldon, 2 Wheaton, 119 ;
U. S. vs. Reese, 92 U. S., 214.

The English Stock Jobbing Act (7 George 2, Chap. 8), which declared void all contracts of a certain kind, " in any public or joint store, or other public securities whatsoever," was held inapplicable to transactions in foreign funds or in railway shares.

Henderson vs. Bird, 3 Stark, 158.
Wells vs. Porter, 2 Bing. N. C., 722.
Hewitt vs. Price, 4 M. & G., 355.

Courts will always refuse to supply a *casus omissus* in a penal statute, no matter how clear may be the legislative intent to include it.

Underhill vs. Longbridge, 29 L. J. M. C., 65.
Thomas vs. Stevenson, 2. E. & B., 108.
Coe vs. Lawrence, 1. E. & B., 516.
Broadhead vs. Holdsworth, 2 Ex. D., 321.
Southwestern Railroad Company vs Cohen, 49 Ga., 827.

The three words " except for cash " must be construed according to the well known maxim *noscitur a sociis* in connection with the rest of the section. The evident intent of the section is to use the word " cash " in its well known grammatical and correct sense, to wit, a sale for money, not a sale for merchandise. It was the intent of Congress to forbid a postmaster to imitate an insurance agent who may accept payment for premiums in many other things besides money ; in one case the cancellation of a score at a tavern against him individually for beer and billiards (see Lycoming Fire Ins. Co. vs. Ward, 90 Illinois, 545) ; not to prohibit the sale of postage stamps upon credit. Had

it been the intent of Congress to forbid the sale of postage stamps upon credit, that body would have said so; or else would have added to the word "cash" two other words "on delivery," so that the phrase would read "except for cash on delivery." These words, Congress omitted from the statute; and it being a penal statute, this Court will not supply them.

Webster, in his dictionary, *sub nomine* "cash," thus defines the phrase: "To pay in cash is opposed to payment in goods and commodities or labor, as in barter." The able counsel for the prosecution have been unable to find in any dictionary any construction of the phrase "a sale for cash," which does not include a sale for credit. The word "cash" is derived from the French word "caisse," which is used in that language in opposition to the word "portefeuille," to signify coin and other current funds, which are kept in a strong box or chest, as distinguished from securities, stocks, shares, bonds, promissory notes, &c., which are kept in a portfolio. It is a well known fact that the phrase "a sale for cash" in nearly every trade means a sale, payment for which is to be made within twenty, thirty, and in some cases sixty days after delivery of the goods, and is in contradistinction to a sale, payment for which is to be made in a promissory note with or without the endorsement of a third party. A leading case upon the subject is a decision by the Court of Appeals of Missouri, as follows:

St. Louis Type Foundry vs. Union Printing & Publishing Co., 3 Mo. App., 142, 149:

"A sale for cash or a sale which is called a cash transaction, the term being interpreted in the sense in which the merchants of St. Louis use it, is something different from a sale of goods to be paid for on delivery. Such a sale may in one sense be termed a sale for cash; but the interpretation put on the phrase a 'cash transaction,' or 'a cash sale,' by the course of deal-

"ings in St. Louis, demonstrates that often what is thus "characterized repudiates the idea of payment at the "time when the goods come to the possession of the pur- "chaser. It is distinctly shown that it is quite consist- "ent with the definition practically given to this phrase "by the well-understood custom of the merchants of St. "Louis, that an interval of thirty days may elapse be- "tween delivery and payment, and yet that the transac- "tion may be called and recognized by every one as a "cash transaction. It follows that a 'sale for cash,' a "'cash sale,' or a 'cash transaction,' is something as "known to merchants of St. Louis, not to be confounded "for a moment with a sale by the terms of which the "goods sold are to be paid for on delivery. The two "expressions are not convertible; and every instruction "which in terms treats them as convertible, or which "assumes their convertibility, is liable to mislead a jury "—indeed, can hardly fail to have that effect. Now "there was no evidence before the jury that the goods "in this case were to be paid for on delivery. There "was evidence that the sale was for cash, or that the "transaction was what is called a 'cash transaction.' "And what this phrase meant we have already seen."

In

Hoffman vs. John Hancock Mutual Life Ins. Co., 92 U. S., 161, 164;

this Court said, speaking through Justice SWAYNE: "Life Insurance is a cash business. Its disbursements are all in money and its receipts must necessarily be in the same medium." And it was consequently held that while part payment of a premium by a note was good, part payment by the barter of a horse was bad. The former was a cash transaction. The latter was not.

See also U. S. v. Williamson, 26 Fed. R., 680;

U. S. v. Douglas, 33 Fed. R., 381.

Point V.

THE DISTRICT COURT OF CONNECTICUT HAS NO JURISDICTION TO TRY MR. PALLISER FOR THE OFFENSE CHARGED AGAINST HIM.

The offense was complete when the letter was mailed. The fact that the person to whom it was addressed lived in Connecticut makes no difference.

Mr. Palliser has a constitutional right to a trial in the Southern District of New York, where he resides and is known. The Commissioner had no right to order his removal to a strange State, where he may be tried and punished as a scapegoat, while the postmasters in whose alleged crime he was merely an accessory before the fact are discharged with nominal fines.

The Sixth Amendment to the Constitution is as follows: "In all criminal prosecutions, the accused shall "enjoy the right to a speedy and public trial, by an im- "partial jury of the State and District wherein the crime "shall have been committed, which district shall have "been previously ascertained by law, and to be informed "of the nature and cause of the accusation; to be con- "fronted with the witnesses against him, to have com- "pulsory process for obtaining witnesses in his favor, and "to have the assistance of counsel for his defense." This amendment is to be construed liberally in view of its history and the rights which it is designed to protect. See Boyd vs. United States, 116 U. S., 616.

It is supplementary to a clause of the Constitution as originally ratified in Section 2 of Article III.: "The trial "of all crimes, except in cases of impeachment, shall "be by jury; and such trial shall be held in the State "where the said crimes shall have been committed."

One of the main objections to the adoption of the Constitution was, that, as originally framed, it did not adequately secure the right of trial by jury and by a jury

of a defendant's neighbors, those living in his vicinity—*vicinage* in law French, from which the word venue is derived.

For example, in the debates of the Convention of North Carolina, Mr. J. M'Dowall said:

"I say the right of trial by jury is not sufficiently secured in criminal cases. The very intention of the trial by jury is that the accused may be tried by persons who come from the vicinage or neighborhood, who may be acquainted with his character. The substance, therefore, of this privilege is taken away."

4 Elliot's Debates, 211.

This right is one of the oldest secured by the common law. It is mentioned in the Great Charter.

Magna Carta, § 20:

"Liber homo non amercietur pro parvo delicto
"nisi secundum modum delicti; et pro magno de-
"licto amercietur secundum magnitudinem delicti
"salvo contenemento suo; et mercator eodem modo
"salva mercandisa sua; et villanus eodem modo
"amercietur salvo wainnagio suo, si inciderint in
"misericordiam nostram; *et nulla prædictarum*
"*misericordiarum ponatur, nisi per sacramentum*
"*proborum hominum de visneto.*"

One of the chief grounds of complaint by our ancestors against Great Britain was the denial of that right to the colonists. On October 14th, 1774, the first Continental Congress unanimously resolved "that the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of that law."

See 1 Elliot's Debates, 44.

One of the grievances against George III. specified

in the Declaration of Independence was: "For transporting us beyond seas to be tried for pretended offenses."

In

U. S. vs. Guiteau, 1 Mackey (S. C. D. C.), 498, 544, 545; Judge JAMES said:

> "There is yet one other consideration which we "conceive to be important, namely, that the con- "struction which we have given to this statute is "consistent with the intent of the Sixth Amend- "ment to the Constitution. That article provides "that 'in all criminal prosecutions the accused "shall enjoy the right to a speedy and public trial "by an impartial jury of the State and district "*wherein the crime shall have been committed.*' The "Constitution had already declared that: 'The trial "of all crimes, except in cases of impeachment, "shall be by jury; and such trial shall be held in "the State where the said crimes shall have been "committed;' but the protection of accused per- "sons against the hardship of removal to a distant "place of trial, and of increased diffi- "culties of defense, was a matter of so "much concern that a further limitation was "added. The important point is that, under both "provisions, the place of trial and the tribunal "were to be determined by the place where the "crime was committed, and that this protection of "accused persons was not to be defeated by any "unnecessary theory as to where a crime must be "deemed to be committed. This provision of the "fundamental law had no reference whatever to "the common law, or to the peculiarities of any "external system. It was intended to be an ex- "pression in original terms, a provision which was "sufficient in itself, and which spoke for itself; "and it plainly assumed that the place wherein a

" crime was committed was the place where the " act of the offender was done. It was, on the one " hand, the general intent of the Constitution that " the federal power to punish acts which were " crimes against the United States should be " plenary, and, on the other, *it was the intent of* " *this protection of the accused party, that crimes* " *should be deemed to be committed where the mani-* " *fest act was done, and not where the mere conse-* " *quences of that act finally happened.*

" The application of this principle of construc- " tion does not depend on the question whether " the place in which the act is done is in a State " and judicial district of the United States. The " provision referred to contains, independently of " that question, a rule for determining where a " crime shall be said to have been committed. It " imports that the crime shall be held to be com- " mitted in the place where the offender mani- " festly acts, and it forbids any law which should " provide for his trial in a district where the ulti- " mate consequences of his act happen, but where " he does not act."

This decision was approved by Mr. Justice BRADLEY in

Ex parte Guiteau, 10 Washington Law Reporter, 385.

See also

Riley vs. State, 9 Humphrey (Tenn.), 646, 656–659; quoted *infra*, pp. 32–34.

In

The State vs. Moore, 26 N. H. (6 Foster), 448;

The defendant was indicted for having while in Maine incited others to commit arson in New Hampshire. It was held that he could not be tried in New Hampshire for the crime. The Court said, speaking through WOODS, J. (at pp. 454–456):

" According to the authorities cited, which are

" believed to contain and to show what was the
" law of England upon the subject under consider-
" ation, after the passage of the act of 2 and 3
" of Edward VI. chap. 24, (A. D. 1549), we
" think there can be no doubt that in England an
" accessory in a felony before the fact could, in
" virtue of that act, be tried for the offense only
" in the county in which he committed the offence
" of procuring or advising the commission of the
" principal offense, which was committed in another
" county. And it seems to us that this view is in
" accordance with the general principle of the
" common law that crimes are local, and can only
" be tried in the county where they are committed.
" The crime of the accessory, if it can be regarded
" as committed anywhere, is committed at the
" place where the intelligent agent is procured to
" commit the principal act. And, so far as we are
" advised, the law of England remained the same
" from the passage of the act aforesaid to the time
" of the American Revolution. And it is well
" settled that the law of England, both common
" and statute, as it was at the organization of the
" provincial government, so far as the same con-
" sists with our institutions, is the law of New
" Hampshire, unless it be repugnant to the Consti-
" tution, or altered or repealed by some statutory
" or legislative enactment (State vs. Rollins, 8 N.
" H. Rep., 550). And we are not aware that the
" law of England, adopted and in force in this
" State, has been so altered as to reach the case
" under consideration."

See also State vs. Knight, 1 Taylor, N. C., 65 ; A. D. 1799.

1. THESE CONSTITUTIONAL PROVISIONS CANNOT BE NULLIFIED BY ANY STATUTE OF THE UNITED STATES.

Consequently, if Section 731 of the Revised Statutes conflicts with them, it is unconstitutional and void. That section is as follows : "When any offense against the "United States is begun in one judicial circuit and "completed in any other, it shall be deemed to have "been committed in either, and may be dealt with, in- "quired of, tried, determined and punished in either "district, in the same manner and as if it had been ac- "tually and wholly committed therein."

In the following cases in Missouri, statutes were held void ; because authorizing the trial of an accused in a different county from that where the offence was committed and consequently in conflict with a provision in the State constitution :

Ex parte Slater, 72 Mo., 102 ;
State vs. McGraw, 87 Mo., 161 ;
State vs. Hatch, 4 Southwestern Reporter, 502.

2. BUT THAT STATUTE DOES NOT COVER THE CASE AT BAR.

Mr. Palliser's alleged crime was complete when the letter was mailed.

In

U. S. vs. Worrall, 2 Dallas, 384, 387-388.

The offer of the bribe was in a letter written and mailed in Pennsylvania, but addressed to and received in New Jersey.

It was held by CHASE and PETERS, J. J. :

"The letter appears by its date to have been written in Pennsylvania, and it is actually delivered by the defendant at a post-office in Pennsylvania. The writing and the delivery at the post-office (thus putting it in the way to be delivered to Mr. Coxe) must be considered in effect, as one act ; and, as far as respects

the defendant, it is consummated within the jurisdiction of the Court."

In

U. S. vs. Comerford, 25 Fed. R., 902;

it was held that a person who mails an obscene letter can only be punished in the district within which the letter was mailed, not in that where it was received.

In

U. S. vs. Bickford, 4 Blatch., 337, 339;

it was held by Mr. Justice NELSON and Judge SMALLEY, that the sending of a fraudulent application for a pension can only be punished in the district where such application was mailed.

In

U. S. vs. Plympton, 4 Cranch. C. C., 307;

The headnote reads: "A forged paper, inclosed in Baltimore in a letter to a person in Washington, D. C., and put into the post-office at Baltimore, is not an uttering of the note in Washington." See for an analogous case

State vs. Bunker, 38 Kansas, 737.

See also U. S. vs. Britton, 2 Mason, 464, 469; per Story, J.

In Rex vs. Williams, 2 Campbell, 506, 507;

The prisoner was indicted for sending a letter with intent to provoke a challenge.

Lord ELLENBOROUGH said: "There was a sufficient "publication in Middlesex, by putting the letter into the "post-office there, with the intent that it should be de- "livered to the prosecutor elsewhere. Had it never been "delivered the defendant's offense would have been the "same. On trial for high treason, intercepted letters are "received in evidence of overt acts of treason, in the "county where they were written."

Perkin's case, 2 Lewis Crown Reports, 150, 151;

The defendant was indicted for uttering a forged check.

Park, J.: "I am of opinion that the putting a letter

" into the Manchester post-office, containing a forged in-
" strument, is an uttering of that instrument in the
" County of Lancaster," where Manchester is situated.

In

Regina vs. G. Holmes, 15 Cox, 343:

Decided by COLERIDGE, C. J., Denman, HANKINS, WILLIAMS and MATHEW, JJ., a false pretense was made in a letter written and posted in Nottingham, England, addressed to, received by and acted upon by a person in France. The Court held that it had jurisdiction in the County of Nottingham to convict the prisoner.

LORD COLERIDGE, C. J.: "I confess that it did not occur to me that there could be any doubt upon the question, nor, upon consideration, does there appear to be any. The pretense was made in the County of Nottingham."

The same point was decided in

Regina vs. Cooke, 1 F. & F., 64.

In State vs. Wyckoff, 2 Vroom (N. J.), 65; it was held that the foreign instigator of a crime is not punishable where the crime was committed.

3. THIS VIEW IS IN HARMONY WITH THE ANCIENT COMMON LAW BEFORE THE TIME OF EDWARD VI.

The statement in the preamble to the Act of 2 and 3 Edward VI., Chapter 24, that previously when a man was wounded in one county and died in consequence in another county, he could not be tried in either was in conflict with the Year Book, Anno 6, Henry VII., folio 10:

" John Long fuit arrain de c' q fuit troue devant le
" Coron de Lond Super visum corporis de un home, q il
" tali die & an ove un shovel pcut luy in le County de
" Midd, p. force de ql le dit hoe mort deins l' an. Et
" le Court luy discharge a del Enditemt, car Ils
" tenoit q le Jur de Lond' ne poit enqrir de pcut in
" Midd'. Car Si un fuit Appel de c q fuit pcut' in un

" Com. et mor in aut County, coe poit estr ambid'
" Counties joindr in trial s' ils puissent, s. ou le mort fuit,
" et ou le peut' fuit et s' ils ne purr joind', come Lond'
" ne poit doncq e ne ser. try. Come in P. 11 H. 4 in
" Trns de menace in Lond' a un S p q il pd ses besognes
" in aut County, et fut nient faits, et p e q ils ne purr
" joind', le bre abatr, p e q est nul Trns, si ambid choses
" ne fur faits, p q l' un County ne poit enqrir de chose in
" aut Com. Et issint le e s icy de l' Enditement: car
" e n'est felon Sans le percut', et aury le mort pursu-
" ant de e, et qd est trove q le mort fuit in aut County
" q le percut' fuit, e est trove de Jurors d' aut County
" de mort fuit void: mes in cel cas ad este use aps le
" mort a amesn le mort, s. le corps in le County ou il
" fuit pcusse, et doncq a enqr, et trover q il fuit
" percut', et mor de ceo. Et puis le felon paid s fee,
" et fuit disch."

In Riley vs. State, 9 Humphrey (Tenn.), 646, 656-659, Judge GREEN said:

" It is insisted that there is no evidence in this record
" that the deceased man died in Henderson County;
" and that it is indispensable in order to give the Court
" trying the prisoner jurisdiction of the cause, to show
" that the death took place in the county where the
" indictment was found. At common law, the party
" committing a criminal offense must be indicted in the
" county where the offense was committed. But in the
" case of homicide, if the wound was given in one
" county and the death happened in another, it was
" said by some that the party was not indictable at all,
" because the offense was not complete in either county,
" and the jury could inquire of what happened only in
" their own county (1 Hawk., P. C., 94, 1 East, 361).
" But the common opinion was that he might be in-
" dicted where the stroke was given, for that alone is
" the act of the party, and the death is but a conse-
" quence; 1 East, 361. The doubt then raised upon
" this subject produced the Statute 2 and 3, Edw. 6, Ch.

" 24, which provided that in such case the party might " be tried in the county where the death happened. " This Statute, the Supreme Court of North Carolina, de- " cided in Orrell's case (1 Dev. L. R.) was in force in " that State, and, therefore, until the passage of our Act " of 1808, Ch. 126, Sec. 1, a party guilty of homicide " was indictable in the county where the death hap- " pened. But that Act provides that ' in all criminal " ' cases the trial shall be had in the county in which " ' the offense may have been committed, * * * " ' subject to a change of venue, according to the pro- " ' visions of the law. ' It is insisted by the counsel " for the prisoner that the Act of 1809 does not " repeal the Statute 2 and 3, Ed. 6, but is only " declaratory of the law as enacted by that stat- " ute. We think this construction erroneous. For " although at common law, it was said the of- " fence was not complete until the death, yet it would " be doing violence to language to say that the offence " was committed in the county where the death hap- " pened, although the stroke were given in another " county. Therefore, when the Act of 1809 prescribes " that the trial shall be had in the county where the " offence was committed, the intention of the Legisla- " ture was, not to declare the law as enacted in Second " and Third Ed., 6 Ch., 24, but to alter the law and " establish a different rule. But it is insisted that the " construction only restores the common law rule, and " involves the subject before us in all the uncertainty " that existed before the statute of Ed. 6, and as a con- " sequence, if the stroke be given in one county and the " death happened in another, the party can be indicted " in neither. We do not think the consequences follow.

" In the first place, the statute of Ed. 6 was enacted " to remove all doubt upon the subject, because differ- " ent opinions, growing out of the refinements of that " period of the common law, had been expressed. We " find no decision in which it had been held that the

" murderer, in such case, could be indicted in neither " county. On the contrary, East says, the common opin- " ion was that he might be indicted where the stroke " was given. That alone is the act of the party. He " commits this act, and the death is only a consequence. " Therefore, when the Legislature enact that the party " shall be tried in the county where the offence may " have been committed, they intended where the active " agency of the perpetrator was employed. And this " law is only in accordance with the constitution, which " declares that he shall have a ' speedy public trial by " an impartial jury of the county or district in which the crime shall have been committed ' (Art. 1, Sec. 9)."

Point VI.

THE ORDER BELOW SHOULD BE REVERSED, AND THE CIRCUIT COURT DIRECTED TO ENTER AN ORDER DISCHARGING THE PRISONER.

ROGER FOSTER,
Of Counsel for Appellant.

FILED.
FEB 3 1890
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

In the Matter of the Application

OF

CHARLES PALLISER,

Appellant,

For a Writ of Habeas Corpus.

No. 1538.

CHARLES PALLISER,

Appellant,

against

THE UNITED STATES, JOHN A. SHIELDS and MARTIN T. McMAHON,

Respondents.

NOTICE AND STATEMENT OF MOTION TO ADVANCE CASE.

ROGER FOSTER,

Attorney and Counsel for Charles Palliser, Appellant,

206 & 208 BROADWAY,

New York City.

Burgoyne's Quick Printing Business, cor. Walker and Centre, N. Y.

1

NOTICE OF MOTION.

Supreme Court of the United States. 2

IN THE MATTER OF The Application of CHARLES PALLISER, Appellant, for a writ of *Habeas Corpus*.	3
CHARLES PALLISER, Appellant, AGAINST THE UNITED STATES, JOHN A. SHIELDS and MARTIN MCMAHON, Respondents.	No. 1538

4

SIR: Take notice that, upon the verified statement of motion hereto annexed, I shall move this Court at a Stated Term thereof to be held at the Capitol, in the City of Washington, in the District of Columbia, on the first Monday of February, 1890, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order advancing this appeal and setting down the same for a hearing on some day during the first or second week in February, 1890, and

for such other and further relief in the premises as may be just.

New York, January 28th, 1890.

Yours, &c.,

ROGER FOSTER,
Attorney and Counsel for Charles Palliser,
Appellant,
206 and 208 Broadway,
New York.

To HON. WILLIAM HENRY HARRISON MILLER,
Attorney General.

STATEMENT OF MOTION.

IN THE SUPREME COURT OF THE UNITED STATES.

IN THE MATTER

OF

The Application of CHARLES PALLISER,
Appellant,
For a writ of *Habeas Corpus*.

CHARLES PALLISER,
Appellant,

AGAINST

THE UNITED STATES, JOHN A. SHIELDS and MARTIN T. MCMAHON.
Respondents.

Number 1538.

And now comes the appellant Charles Palliser, by Roger Foster, his attorney and counsel, and moves for

leave to advance this case in accordance with Rule Twenty-six of the Rules of the Supreme Court, and to have the same set down for a hearing on some day during the first or second week in February, 1890, for the following reasons: This case is an appeal from an order of the Circuit Court of the United States for the Southern District of New York, dismissing a writ of *habeas corpus* issued at the prayer of this appellant and addressed to the above-named individuals; the first named of whom was a United States Commissioner, and the second of whom was a United States Marshal, who then held him in custody under a warrant issued under color of the postal laws of the United States, which order also remanded the petitioner to the custody of the said marshal. Said warrant was issued for the purpose of arresting this appellant and removing him for trial to the District Court of the United States for the District of Connecticut for an alleged offense under said postal laws. More than forty similar charges are now pending or threatened against this appellant for similar alleged violations of said postal laws, on account of the alleged issue by him of a certain circular letter requesting certain postmasters in the State of Connecticut to sell him postage stamps upon credit. The sending of such a circular is claimed to be an offense under Section 5451 of the Revised Statutes of the United States, and the Act of June 17th, 1878, 22 Statutes at Large, page 141. Proceedings are now pending in the said District of Connecticut against certain postmasters for alleged violations of said postal laws, by their alleged selling of said postage stamps to this appellant on credit. This appellant believes that neither the sending of such a circular, nor the selling of postage stamps on credit constituted any offense under the said postal laws, or any provisions of the statutes of the United States. Said postal laws are obscure and of doubtful construction. The District Judge of the United States, for the District of Connecticut, the Honorable Nathaniel D. Shipman, has postponed a submission to the Grand Jury there of the charges against this appellant

and has ordered a postponement of the charges against one or more postmasters in the said State, in order to have a construction of said Statutes by the Supreme Court of the United States in this proceeding, if possible, before the consideration of such matters by the Grand Jury and the trial of any indictment found by the Grand Jury. The next term of the District Court of the United States for the District of Connecticut is appointed to be held on the twenty-fifth day of February, 1890, at the City of New Haven, in the State of Connecticut, at which time said matters will probably be considered by the Grand Jury and the Court. The Judge of the Circuit Court of the United States for the Southern District of New York, who made the order from which this appeal is taken, appointed the return day for this appeal, for the third Friday of January, 1890, in order that the matter might be summarily disposed of by this Court. The transcript of the record below has been duly filed, the fee for printing the same paid; and this case has been docketed on the calendar of this Court, for the October Term of 1889, as Number 1538.

The reason for appellant's delay in making this motion is that he first endeavored to induce the Attorney-General to make the same. The District-Attorney of the United States for the District of Connecticut, has requested the Attorney-General to make this motion.

This appellant respectfully submits that this case, although not strictly a criminal proceeding, is in the nature of a criminal proceeding, and, therefore, in the equity although not within the letter of Subdivision Three of Rule Twenty-six of this Court.

He further submits that sufficient special and peculiar circumstances exist in this case to warrant the immediate taking up of this case and to grant to it a preference under Subdivision Seven of Rule Twenty-six of this Court. And he further respectfully refers the Court to its language, when speaking through Mr. Justice MATHEWS, in the case of Roberts vs. Reilly, 116 United States, 80 at pages 92 to 93; concerning Sections 763 and 765 of the Revised

Statutes of the United States, under which this appeal is taken, as follows: "This statutory "provision evidently contemplates the summary char- "acter of the proceedings under the writ of *habeas cor-* "*pus* as not admitting in favor of the liberties of the "citizen, the delays usual and necessarily attending "ordinary litigation between parties, and confers upon "the judicial tribunal, or the Judge hearing the appli- "cation and making the order which is the subject of "the appeal, discretion to send up the case to the ap- "pellate tribunal, under such regulations and orders as "may seem best adapted to secure the speediest and "most effective justice. This harmoniously adopts "the practice in direct appeals in such cases under "these sections of the Revised Statutes to that exer- "cised independently of these provisions by means of "the original writ of *habeas corpus*, with the aid of a "writ of *certiorari*, to bring up the record of the pro- "ceedings to be reviewed."

ROGER FOSTER,
Attorney and Counsel for Charles Palliser,
Appellant,
206 and 208 Broadway,
New York.

STATE OF NEW YORK,
City and County of New York, } ss.:
Southern District of New York,

CHARLES PALLISER, being duly sworn, deposes and says: I am the above-named appellant. Each and every allegation in the foregoing statement of my motion is true.

CHARLES PALLISER.

Sworn to before me this 28th day of January, 1890.

[NOTARIAL SEAL.]
Notary Public,
N. Y. Co.

FILED.
APR 29 1890
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

CHARLES PALLISER, APPELLANT,
vs.
THE UNITED STATES *et al.*
No. 1538.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

STATEMENT.

It is deemed necessary to make a statement somewhat fuller than that of counsel for appellant.

Appellant was a member of the firm of Palliser, Palliser & Co., architects and publishers of books on building, with their principal office in New York city. They addressed to forty postmasters, of the fourth class, in Connecticut the following letter:

> DEAR SIR: We desire in each county a place through which to send mail matter, as we want to

reach every business man, mechanic, and real-estate owner in every State by circular.

If we ship to you from our printing department, located in the county in your State, say, 5,000 or 10,000 circulars in envelopes and each addressed, will you give the same your careful attention, sending out daily 50 to 100 during the coming months until they are all out, and then render us a statement of same, with account for stamps used, and we will remit.

We are doing this at other general store post-offices in adjoining counties to yours, and it is perfectly legitimate, and we await your reply in addressed and stamped envelope inclosed herewith, as, if you cannot attend to same, we must at once send elsewhere.

Yours, very truly,

PALLISER, PALLISER & CO.

If the plan, which this letter discloses, had been carried out, the firm would have had the benefit to be derived from mailed advertisements distributed through Connecticut, at the rate of 4,000 a day for one hundred days, without the payment of any postage until after all the circulars had been sent, and until after they were able to realize largely the benefits of the same. Assuming the postage to be 1 cent for each circular, the amount thereby withheld from the Government for an average of fifty days, and upon which the firm could save the interest for that time, would have been $4,000. The extension of this same plan to other fourth class post-offices in Connecticut, and to other States, as foreshadowed in the letter quoted, would result in a very substantial saving of interest to Palliser, Palliser & Co., on their investment in

advertising. This suggests at least one motive for their plan.

The inducement offered to the postmasters in these letters to comply with the request therein contained was the increased compensation which the sale and cancellation of so many stamps would bring them. A fourth-class postmaster is entitled to receive upon the first $50 of stamps canceled, 100 per cent.; upon the next $100, 60 per cent.; upon the next $200, 50 per cent., and above that amount 40 per cent. until he reaches the limit of his compensation, $250 a quarter (Rec., p. 15 and 22 Stat. L., 602). The loss to the Government by such a distribution of mail matter through fourth-class post-offices, which would naturally be sent from New York, the business place of the firm, is apparent. If the circulars had been mailed from New York, or any place where the postmaster is a salaried officer, the cost to the Government would have been practically as much less than under Palliser's plan as the percentage of commission which these fourth-class postmasters would get on the stamps canceled on the circulars sent out by them.

This would be the practical difference, because, while the cost of handling the circulars in New York and on the road to Connecticut would be something, the mass of mail matter there, and on the road to Connecticut, is so great that the proportionate cost for these circulars would be very small.

What Palliser proposed to do in these letters may be summarized as follows: He offered to buy and pay for stamps enough to materially increase the postmasters' pay on condition that they gave him fifty days' credit on the

stamps, but not otherwise, and the result would have been an increase in cost to the Government in handling the circulars, equal to the commission of the postmasters, over what it would have cost had the circulars been sent from New York, where Palliser did business.

The complaint was based on a letter addressed to the postmaster at Black Hall, Conn. The evidence tended to show that it was mailed from New York (Rec., p. 10), although similar letters to other postmasters had been mailed from Bridgeport (Rec., p. 8). A fortnight after the letter was received by De Wolfe, who was the postmaster at Black Hall, a box of circulars from Palliser was sent to him, presumably from Bridgeport, which it is reasonable to infer was the place of the printing department referred to in the letter quoted above. He returned the box, and did not accept the offer made.

The evidence as to the forty other postmasters was relevant to show the motive of Palliser in writing this letter to the postmaster at Black Hall, and in explanation of the plan to be carried out, of which this was only a small part.

ARGUMENT.

Point I.

THE SUPREME COURT HAS NO JURISDICTION TO ENTERTAIN THIS APPEAL, BECAUSE THE ORDER DISMISSING THE WRIT WAS MADE BY THE CIRCUIT JUDGE AND NOT BY THE CIRCUIT COURT.

Section 658, Revised Statutes, provides that the regular terms in the southern district of New York

> shall be held in the city of New York on the first Monday in April and the third Monday in October; and for the trial of criminal causes and suits in equity on the last Monday in February, and exclusively for the trial and disposal of criminal cases and matters arising and pending in said court, on the second Wednesday in January, March, and May, on the third Wednesday in June, and on the second Wednesday in October and December: *Provided*, That the holding of any of the last-mentioned terms for criminal business shall not dispense with nor affect the holding of any other term of the court at the same time, and that the pending of any other term of the court shall not prevent the holding of any of the said terms for criminal business.

It will be noticed that the regular criminal term of the court begins on the second Wednesday of October, and that the regular term begins on the third Monday of October. The proviso evidently contemplates that the regular criminal terms and the regular terms may be held at the same time, but that they shall be held separately. It would therefore be entirely competent for the court to adjourn the regular criminal term and to continue the regular term. Would it be proper then, to try criminal causes at the regular term after the adjournment of the regular criminal term? If so, what is the use of distinguishing one from the other? The special provision in a previous part of the same section that in the northern district adjourned terms shall be held for civil business only, is relied on to show that in the southern district, with respect to which there is no such express prohibition of criminal business at regular terms, the implication is that both civil and criminal business may be transacted at regular terms.

But the maxim *expressio unius est exclusio alterius* does not apply, because the language of the section with respect to the two districts is so different. In the northern district no provision is made for separate criminal terms. Both civil and criminal business is necessarily transacted there at the regular terms, whereas in the southern district, regular criminal terms, for exclusively criminal business, are provided for to be held in January, March, May, June, October, and December, and a regular term for criminal and equity cases in February. It is fair to assume that the regular April and October terms were intended for civil business only, because such ample provision is here made for criminal terms, which are permitted to be held at the same time.

The petition in this case was heard by Lacombe, judge, at a time when the criminal term which began on the second Monday in October was not in session, and before the regular criminal term to begin on the second Wednesday of December. (See opinion, Rec., p. 34.) The court was therefore not in session for the trial of criminal cases or the disposal of criminal matters arising and pending in said court.

Now, it is fully conceded that under the case of *ex parte* Tom Tong (108 U. S. R., 556) *habeas corpus* is a civil proceeding, but we contend that it is a civil proceeding in reference to a criminal prosecution such as to make it a "criminal matter arising in the court" within the section of the statute above quoted. The section is one providing for the orderly dispatch of business. It is obvious that a *habeas corpus* proceeding of this kind involves an investigation of and judgment upon evidence tending

to prove or disprove the probable guilt of the petitioner, and a discussion of criminal law. For this reason the hearing is quite the same as the investigations necessary in strictly criminal cases, and is so much more convenient at a term for disposing exclusively of criminal matters that in a section designed to facilitate business by classifying it, the construing of "criminal matters" to include *habeas corpus* cases is justified whatever the technical nature of the proceeding.

It would follow that the application to and the hearing by Judge Lacombe could not be at a term of the court for hearing such cases, and therefore that it was before him as judge. His order dismissing the writ can not be appealed from. (Casper *vs.* Fitzgerald, 121 U. S. R., 87).

But whether he might have heard the petition in session as a circuit court or not he in fact decided that he could not do so and refused to consider the petition except in his capacity as judge, and as such judge dismissed the writ. His opinion was filed in court as his direction to the clerk to make the proper order, and in the opinion he expressly holds that he is sitting as circuit judge (Rec., p. 34). The mere fact that the clerk recited the usual title at the head of the entry ought not to control the judge's express direction, here made part of the record, that the dismissal should be entered as the act of the circuit judge.

For these reasons, it is submitted this court has no jurisdiction to entertain the appeal.

Point II.

THE CIRCUIT JUDGE HAD DISCRETION TO REFUSE THE WRIT, THE QUESTIONS THEREON PRESENTED BEING DOUBTFUL, ON THE GROUND THAT THE SAME QUESTIONS WOULD REGULARLY ARISE BEFORE THE DISTRICT COURT IN DUE COURSE AND AFTER THE DECISION OF THAT COURT MIGHT BE BROUGHT ON ERROR TO THE CIRCUIT COURT.

An examination of Judge Lacombe's opinion will show that the foregoing was his real ground for dismissing the writ. He says:

> Whether or not the same decision (*i. e.*, against petitioner's construction of the statute) would be reached in a criminal case is another question which, unless good grounds to the contrary are shown, should be determined in proceedings conducted according to the regular and orderly practice in Federal courts, whereby there is, in the first instance, a decision upon the law by the district court, and if desired, a review of such decision by the circuit court, which may in a proper case be constituted with two judges, and if they differ in opinion they may certify any question of difference to the Supreme Court.

The appellant was committed for trial. Before he could be removed to Connecticut, where the trial was to take place, a warrant must have been issued by the district judge ~~of Rehobath~~. Upon such warrant, the question might regularly have been raised of the sufficiency of this commitment. (*In the matter of Charles Dana*, 7 Benedict, 1; *In re Buell*, 3 Dillon, 116.) The same

question of law might have been raised in the district court of Connecticut by demurrer to the indictment and a motion in arrest of judgment, or in the circuit court on a petition in error, where, if the judges differed, the question might have been certified to this court for decision.

In such a case, it is submitted that an application for the writ of habeas corpus is addressed to the sound discretion of the court, and where doubtful questions of law arise upon the construction of statutes, or where one objection to the commitment is based, as in this case, upon the unconstitutionality of an act of Congress, the judge may refuse to discharge the prisoner, and remit him to the custody of the officer of that court where all the questions raised on habeas corpus may be satisfactorily disposed of by a hearing in due and regular course. It is not to be presumed, in advance of the decision by the court having jurisdiction over the case, that the proper conclusion will not be reached by that court, and justice done the accused.

In the case of *The Commonwealth* vs. *Whitney* (10 Pick., 434), the petition was for the writ of habeas corpus by a judgment debtor who had been committed to jail on execution after the death of the plaintiff. Mr. Chief Justice Shaw, delivered the opinion, refusing the writ, and in so doing used this language:

> The court are not prepared to say that the imprisonment was unlawful, so as to entitle the prisoner to his discharge forthwith as a matter of right, but if it was, he has his remedy by writ of *audita querela*, in which the facts could be put in issue and the rights of the parties more regularly settled. * * *
>
> The writ of habeas corpus is a summary process. The power given by it is to be exercised under a

> sound discretion and with reference to all the circumstances of the case. The proceeding at present is of necessity *ex parte*. No reasonable time has yet elapsed since the death of the creditor for the appointment and qualification of an administrator. Whatever claims the prisoner might have to the extraordinary interposition of the power of the court under other circumstances, we do not perceive sufficient ground upon which to discharge him from his imprisonment on this process.

In Hurd on Habeas Corpus, page 336, speaking of the writ of habeas corpus, it is said:

> Where, also, it is discovered that it will interfere unnecessarily with another competent and acting jurisdiction, it will be denied, as an inappropriate remedy, for it was not designed to be used to frustrate or interrupt the due course of justice, nor to intermeddle with other judicial proceedings while a ready redress can be had by application to the tribunal whose action may be the subject of complaint.

It is not, of course, denied that the circuit judge had jurisdiction, if he chose to exercise it, to issue the writ, but what is here claimed is that he had discretion to refuse it on the ground which he gives in his opinion.

Section 761, Revised Statutes, provides that in cases of habeas corpus the court or justice or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments and to dispose of the party as law and justice require. In *Ex parte Royall* (117 U. S. R., 241) it was held that though a United States circuit court on habeas corpus had power to discharge a prisoner held on an indictment in a State court, which was in violation of the Constitution of the United States,

nevertheless it had discretion to refuse the writ until the case had been carried to the court of last resort in the States, unless circumstances were present requiring immediate action, and that "law and justice" did not require the circuit court to anticipate a wrong decision by the State court or to interfere before it had adjudged the case. Says Mr. Justice Harlan, speaking for this court:

> The injunction to hear the case summarily, and thereupon to dispose of the party as law and justice require, does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred on it.

If discretion exists at all under section 761, it is not apparent why it may not be exercised also in cases like the present, and the writ refused until the district court shall have acted. It is true that there the reluctance to interfere with the process of a State court until it became necessary, was the chief ground for exercising the discretion to refuse the writ, but if discretion to delay exists at all in the one case it exists in the other, and the only question is whether there is a proper case for its exercise. One circumstance justifying the exercise by the circuit court of its discretion to refuse the writ was thus referred to by Mr. Justice Harlan:

> It is stated in one case that he gave bail, but was subsequently surrendered by his sureties.
>
> But it is not alleged and it does not appear in either case, that he is unable to give security for his appearance in the State court, or that reasonable bail is denied him, or that his trial will be unnecessarily delayed.

Says counsel for the appellant in his brief (page 14):

> By acceding to Mr. Palliser's request, the postmasters increased their official profits, but he would have been at perfect liberty to have bought those postage-stamps from them for cash on delivery, either by himself or through any other person who might loan him the money with which to do so, and thus to similarly increase the compensation of the postmasters. So the United States has lost nothing by this transaction. A request to an official to aid the party making the request in the commission of an unlawful act through which both will gain a profit is not a bribe.

It is quite true that Palliser might have bought the stamps and so lawfully increased the postmaster's compensation, but so also he might have paid him money as a free gift lawfully. The offense consists in the promise to pay or payment with intent to induce violation of the law. Here was an offer to increase his fees if he violated the law and a statement that unless he violated the law the fees would not be so increased. If Palliser, with intent to induce a fourth-class postmaster to unlawfully open a letter, offered to buy and mail $100 worth of stamps at his postoffice, paying cash for them, this would have been within the section, because it would be an offer to pay money to the officer to induce him to violate his lawful duty. It is the option of Palliser to buy or not to buy stamps which enables him to make what would otherwise be entirely lawful on his part a motive for wrong-doing by the postmaster. A request to an official to aid the party making the request in the commission of an unlawful act through which both will gain a profit, is within sec-

tion 5451, if, as in the present case, the transaction involves the outlay of money by the offerer for the benefit of the officer, and is in effect a promise to make such outlay.

Then it is said (page 16) that the agreement to increase legal fees is not within the statute, because legal fees are not an "undue reward" within Blackstone's definition of a bribe. The legality of the fees to be received has no more to do with the question than would the legal right of the officer to collect a negotiable note from the maker which had been indorsed to him by the briber.

The maker could not set up the illegality of the consideration between the briber and his indorsee, but the note would be none the less a bribe.

Does counsel mean to claim that, because the law allows certain fees for money paid, an agreement to increase those fees in consideration of a violation of the officer's lawful duty would not be an undue reward to influence his official action? Take a case under the internal-revenue law. Many collectors receive a percentage on collections. A distillery is shut down. The distiller goes to the collector and says: "The receipts of your office are low while my distillery is shut down. I will agree to begin running and to purchase $1,000 worth of tax-paid stamps a day if you will allow me to remove from my cistern room twenty barrels of whisky a day in addition to those I pay tax on." Would counsel for the appellant claim that the offer to increase the collector's receipts and percentage was not the offer of an undue reward when made to induce such a fraud upon the Government. The undue character of the reward in such a case necessarily

grows out of the nature of the consideration for it, which moves from the officer to the offerer, and not at all by the manner in which the reward is conferred on the officer.

Then it is claimed that the letter contained no offer, because if the transaction had been legitimate no contract would have existed upon acceptance by the postmaster. The offer, it is said, is too indefinite. That the letter contained an offer to send circulars and pay for the stamps after they had all been sent out, one reading of it makes apparent. It is not supposed that an offer to bribe need be in the definite form of a contract to make it unlawful, but even if it had to be, an acceptance of the letter in this case would have fulfilled that requirement.

On the whole, it is respectfully submitted that the letter written by Palliser was both an offer to pay money to the postmaster and the tender of a contract for the payment of money to the postmaster, to induce him to sell stamps on credit, and that if this was a violation of his lawful duty the letter was within section 5451, Revised Statues.

Point IV.

THE SALE OF STAMPS UPON CREDIT WAS A VIOLATION OF THE POSTMASTER'S OFFICIAL DUTY AS DEFINED BY THE ACT OF JUNE 17, 1878 (20 STAT. L., 141).

The act referred to provides as follows:

> And no postmaster of any class, or other person connected with the postal service, intrusted with the sale or custody of postage-stamps, stamped envelopes, or postal-cards, shall use or dispose of them in the

> payment of debts or in the purchase of merchandise or other salable articles, or pledge or hypothecate the same, or sell or dispose of them except for cash, or sell or dispose of postage-stamps or postal-cards for any larger or less sum than the values indicated on their faces, or sell or dispose of stamped envelopes for a larger or less sum than is charged therefor by the Post-Office Department for like quantities, or sell or dispose of postage-stamps, stamped envelopes, or postal cards otherwise than as provided by law and the regulations of the Post-Office Department; and any postmaster, or other person connected with the postal service, who shall violate any of these provisions shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars, or be imprisoned for a term not exceeding one year.

It is submitted that the ordinary and natural meaning of the prohibition against a sale, "except for cash," is a prohibition of a sale on credit. Nor can the rule of strict construction of statutes operate to impose on words any other than their natural and usual meaning. Said Mr. Chief-Justice Marshall, in *United States* vs. *Wiltberger* (5 Wheat., 76, 94), speaking of the rule requiring strict construction of criminal statutes:

> The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a

court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest.

It is common knowledge that the ordinary and accepted meaning of the word "cash," when used in connection with a sale, is to denote that the money consideration is to be paid at once on delivery of the thing sold; and that it is constantly used to distinguish such sales from sales on credit.

A grocer is said to do a cash business when he gets the money as he delivers his goods. A "cash" transaction is one where the money passes. In the language of traveling salesmen "ten off for cash" means 10 per cent. discount from the regular list price if the money is paid on delivery of the goods.

Instances of the use of "cash" in such connections and with such a meaning might be multiplied. So well known is this meaning, that it is not surprising that authorities are not numerous on the subject. Cash means money, but it means more than money; it means money at hand, ready money, money in the cash drawer. The exceptional use of the words "sale for cash" by custom in some branches of trade to mean a sale where payment is made within a few days after delivery, but proves the real and proper meaning of the word. What is meant in such a case is that a payment within a few days after delivery is equivalent to a cash payment in that no interest will run on the price. The few days are like days of grace, but the letter of the contract requires immediate payment.

In *Bliss* vs. *Arnold* (8 Vt. 252) it was decided that in all sales for cash the money must be paid when the prop-

erty is delivered. In that case the action was between the owner of cheese and a commission merchant in New York, in whose hands he had placed it for sale. He was directed to sell for cash. He sold for a promise to pay within ten days, and in an action on the case against him for a violation of instructions, attempted to prove a custom among the commission merchants of New York that a sale for cash meant a delivery and payment within ten days. Says Williams, C. J.:

> In all sales for cash the money must be paid when the property is delivered. It is wholly inconsistent to claim that a sale for cash means a sale on credit for a week or ten days. If the commission merchants in New York have adopted such a custom as has been contended, it must have been for their own accommodation and can not be recognized as obligatory upon those who entrust property to them to be sold for cash. We can not believe there is any such custom recognized as law, and we find the decision of Judge Gardner, at the circuit in Monroe County, in the case of *Hendrick* vs. *Smythe*, directly opposed to any such custom as binding upon any person who entrusts property to a commission merchant.

In *Steward & Mettler* vs. *Scudder* (4 Zab., 24 N. J. Law 96), the action was by the plaintiffs to recover back the price of a quantity of corn which had been sold by the plaintiffs as factors of the defendant, the price of which they had paid to him before they had received it from the purchaser. The purchaser had failed after the remittance, and the corn never was paid for. The plaintiffs had been directed to sell for cash, but offered evidence on the trial to prove that among commission merchants in New York

there was a custom by which sales for cash were made upon a credit of a few days, and that this was the true and well-understood meaning of a sale for cash. It was held that evidence of a usage or custom to show that terms in any particular business or trade had acquired a meaning different from their ordinary acceptation was admissible, but that for this the evidence must be plain and explicit; the custom certain, uniform, and notorious. The court sustained the verdict for the defendant. Says Elmer, J.:

> A sale for cash is a sale for the money in hand; at least such is the general meaning of the term. Upon such a sale the owner is not bound to deliver the goods until the price is paid.

Again:

> That the owner of goods, who confides them to a factor to be sold for cash, must still look after and run the risk of the solvency of the purchaser for any length of time, longer or shorter, seems in opposition to the very idea of a sale for cash; the first principle of such a sale being that the goods shall not become the property of the purchaser until he pays the money. A usage to control and reverse this principle, to make that cash which is not cash, but credit, if such a usage can be deemed reasonable and legal, ought to be well established by a custom so universal at the place where it prevails, and so precise and definite, the owner of the goods must be presumed to be fully aware of it.

In *Meng* vs. *Houser* (S. C. Eq. Repts., 13 Richardson, 210), mortgaged property was advertised to be sold for cash, and immediately before the sale it was announced that payment would be received in United States Treas-

ury notes. It was objected that cash meant coin, and that the premises were therefore sold on other terms than those specified in the advertisement of sale. Says Carroll, chancellor, page 213:

> It would be difficult to show that the terms cash in the notice of sale was intended to mean, or actually imported, anything else than ready money, in contradistinction to credit.

In *Farr* vs. *Simms* (Richardson's Eq. Cases, S. C., 131), the supreme court, speaking by O'Neill, J., says:

> The usual terms of a sheriff's sale are cash. The term cash has two meanings; one, payment in current bills; the other, in specie. The first is the popular, the latter the legal, meaning.

In *Foley* vs. *Mason* (6 Md., 37) the supreme court of Maryland, by Mason, judge, speak as follows:

> A cash payment, in ordinary parlance, is understood in contradistinction to a credit payment.

In *Blair & Hoge* vs. *Wilson* (28 Grattan, 165) the question was whether a check had been received as payment of a debt, and the evidence showed that the payee had agreed to take it "as cash." Say the court, on page 175:

> Cash is money at hand; ready money. Worcester. Cash (commerce) is money on hand which a merchant, trader, or other person has to do business with (Bouv. Law Dict., 240). To receive a check, therefore, as cash is to receive it as money—ready money, and imports a payment of the debt for which it is given.

Bouvier in his Law Dictionary says that *cash price* is the price for payment on delivery, and is contradistinguished from barter and credit prices.

The decision cited by counsel for the appellant—*The St. Louis Type Foundry* vs. *The Union Printing and Publishing Company* (3 Mo. Ap., 140)—is simply a holding by the court that the expression "a sale for cash" may be proven by a custom of merchants, uniform and notorious, to have another than its ordinary and usually accepted meaning.

The use of the word "cash" by Mr. Justice Swayne in *Hoffman* vs. *John Hancock Mutual Life Insurance Company* (92 U. S., 161, 164), if it has the meaning attributed to it by counsel for the appellant, was not an exact use of the word.

The maxim *noscitur a sociis* is invoked to make the prohibition one against a sale for merchandise as distinguished from a sale for money or for a promise to pay money. The application of the maxim is not apparent, unless it be claimed that all the different clauses of the statute are to be construed to prohibit exactly the same thing, and that it was the intention of the legislature by tautology to emphasize. The first prohibition in the statute is expressly against a disposal of stamps in the purchase of merchandise. Yet the construction of the words "except for cash," contended for by counsel for the appellant, would give exactly the same meaning to the prohibition against selling or disposing of stamps except for cash.

To speak of a sale of stamps for merchandise is a contradiction in terms. A sale is a transfer for a money

price. A power to sell does not include a power to exchange (*Taylor* vs. *Galloway* 1 Ohio 232). The word "sell" alone has the meaning attributed to "sell for cash" by counsel for appellant. When the "for cash" is added, the meaning is limited to a sale where payment in money is immediate. That the person draughting the section had this meaning of "sell" in mind is apparent in the use of the words "use or dispose of" when the purchase of merchandise is referred to, while here the words are "sell or dispose of except for cash."

It is hardly necessary to call attention to the argument based on the necessary legislative intent in inserting this clause. The policy of the law is sufficiently expressed in section 3900, Revised Statutes: "No mail matter shall be delivered until the postage due thereon has been paid." See also sections 3896, 3897, and 3901. The evils which would follow if postmasters were permitted to sell stamps on credit and the strong probability that such credit would be allowed if it were not expressly prohibited, leave no doubt that sales on credit were what Congress meant to prohibit. Evidently no limitation upon the powers of postmasters with respect to the disposal of stamps could be more important. The policy of the law is to have always in the hands of the postmaster either the stamps or the money. Of the construction contended for by the counsel for appellant it may be said, in the words of Mr. Justice Washington in the case of the *American Fur Company* vs. *The United States* (2 Peters, 367).

> A construction which would sanction so glaring an evasion of the whole policy of the law ought in no case to be adopted unless the natural meaning of

> the words of the act require it. Even penal laws, which it is said should be strictly construed, ought not to be construed so strictly as to defeat the obvious intention of the legislature.

Upon the question of the effect of legislative intention on criminal statutes references may also be had to *United States* vs. *Lacher* (No. 654), decided at the present term of this court, in which Mr. Chief-Justice Fuller quotes with approval the following language from Maxwell on Statutes (2 ed., 318):

> The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times when the number of capital offenses was one hundred and sixty or more; when it was still punishable with death to cut down a cherry in an orchard, or to be seen for a month in the company of gypsies. But it has lost much of its force and importance in recent times, since it has become more and more generally recognized that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object. It was founded, however, on the tenderness of the law for the rights of individuals, and on the sound principle that it is for the legislature, not the court, to define a crime and ordain its punishment.

Point V.

The offence of which the appelant was quilty was triable in Connecticut.

The gist of the offense is the offer to an officer. It is the communication or negotiation with him with intent to

influence his action. It would seem, therefore, that the place where the officer was when approached and solicited would be the place of the crime. If the communication never reached the officer it would be no crime. It was held by Mr. Justice Story that where one man standing on an American ship shot a man on board a ship of a foreign country, the crime was committed on the latter ship. *United States* vs. *Davis* (2 Sumn., 482.) This was because the man on the American ship was constructively present where the instrument of death put in motion by him reached his victim. The motion of the bullet as it entered the body of the man shot at, was as much the act of the man shooting as the pulling of the trigger. No just distinction can be made between such a case and the one at bar. The use of the post-office as the unconscious agency for committing the crime, to send the offer to the officer is exactly analogous to the use of the explosive power of gunpowder in the barrel of the pistol to propel the bullet to the victim. The letter as sent was a continuing act of the sender until it was delivered to the postmaster. In *Evan* vs. *Nicholson* (32 L. T. N. S., 778) the question was whether a man living in the country had stated an account in London so as to give the mayor's court of London jurisdiction. The evidence showed that he had mailed the account from the country to London to the other party. It was held by Lindley, Archibald, Denman, J. J., and Lord Coleridge, that while this was a statement of account at the place from which it was sent, it was also a continuing statement until it reached the person to whom it was directed in London, and so was a statement of account in London.

This case was used as an authority in the case of *The Queen* vs. *Rogers* (3 Q. B. D., 28), which was a prosecution for embezzlement. The trial was had in Middlesex. The case was this: A clerk, whose duty it was to remit at once to his employers in Middlesex all moneys collected by him as their clerk, collected at York a sum of money as such clerk but did not remit it. He wrote and posted from a place in Yorkshire to his employers in Middlesex a letter, which was intended to make them believe that he had not in fact collected the money in question. This letter was duly received by the employers in Middlesex. It was held by the court of crown cases reserved, Kelly, Chief Baron, Field, Lindley, and Manisty, JJ., that the receipt of the letter in Middlesex was sufficient to give jurisdiction to try the prisoner in that county. With the exception of Huddleston, Baron, who dissented, all the judges indicated that in their opinion the prisoner might have been tried in Yorkshire also, but that the crime was properly laid in Middlesex. Says Field, J.:

> Now, there is a strong authority to be found as to the effect to be given to the sending of the letter to Middlesex. In the case of *Evans* vs. *Nicholson* (32 Law Times, New Series, 778) the court regarded a letter as speaking continuously from the moment of its being posted until its receipt by the addressee for the purpose of giving jurisdiction, and the reasoning is in this way: A letter is intended to act on the mind of the recipient. Its action upon his mind takes place when it is received. It is like the case of the firing of a shot, or the throwing of a spear. If a shot is fired, or a spear thrown from a place outside the boundary of a county into another county,

> with intent to injure a person in that county, the offense is committed in that county within which the blow is given. So with the letter. There may, in this case, have been evidence on which a Yorkshire jury might have convicted the prisoner, but I think there was also clearly evidence which justified his conviction by a Middlesex jury. I arrive at this upon principle, and I do not find that the authorities compel me to come to any other conclusion.

By a parity of reasoning, the settled doctrine is that where a crime is committed by a communication sent from one jurisdiction to another, the crime is committed in the district where the letter is received by the person to whom it is sent, when communication with that person is a necessary element of the crime. The discussion and doubt which has arisen as to jurisdiction has generally been upon the question whether the crime was also committed in the jurisdiction where the letter was written and from which it was sent. The weight of authority now seems to be that the crime is also committed in the latter jurisdiction.

Dr. Wharton in his work on Criminal Law, section 288, 8th ed., says:

> Conflicts of jurisdiction may be claimed when an offense is begun in one country to take effect in another. Suppose a libelous or forged writing be mailed in one place to be published in another, or an explosive package be expressed in one place to be opened in another, or a gun shot in one place and the shot takes effect in another, which is the place of the commission of the offense? Arguing by analogy from the law which makes the place of performance the seat of a contract, we would conclude that the place of consummation is the peculiar seat of the

crime. So, in fact, under the common law, it has frequently been decided; though it is settled that a concurrent jurisdiction exists in the place of starting the offense.

And he cites many authorities to sustain both propositions.

In Bishop on Criminal Procedure, section 53, it is said:

> A person who puts forth a libel or a threatening letter, or a letter inclosing a forged instrument, to defraud the one to whom it is addressed, or a letter making a false pretense to a person who thereupon parts with his goods in the county where he receives it; or soliciting one to commit a crime, may be indicted within the county to which it is sent, though he does not go there himself.

And in section 61, the same author says:

> It has been held—a doctrine not firmly established, but perhaps sufficiently so—that a man who deposits in the post-office a letter provoking a challenge to fight a duel, or containing a libel or a forgery, or an offer to bribe, is indictable in the county in which he deposits it, while, as we have seen, he is so also in the county to which it is sent. The principle is that the deposit of the letter is a sufficient publication to constitute an offense, either substantive or as an attempt.

Archbold, in his work on Criminal Practice and Pleadings, page 74, says that a challenge to fight, sent by letter in one county and received in another, may be made the basis of a prosecution either in the county from which the letter was sent or the county in which it was received. He says the same thing with respect to threatening letters.

It follows, therefore, that an authority which sustains the jurisdiction of the crime in the place from which the letter is sent is not to be regarded as an authority opposed to the view that there may be also jurisdiction of the crime where the letter is received. Unless this is the correct explanation, decided cases in the same court, and by the same judges, are in hopeless conflict.

The cases upholding the jurisdiction of the crime in the place where the letter is received are numerous and well considered.

In *Commonwealth* vs. *Blanding* (3 Pick., 304) it was held that a newspaper printed in Providence, in which the defendant had inserted a libel, and which was sent from there to the county of Bristol, and circulated in the town of Rehoboth, in that county, made the defendant guilty of criminal libel within the county of Bristol, in Massachusetts.

In *King* vs. *Burdette* (4 B. & A., 95) it was held that a delivery at the post-office in L. of a sealed letter inclosing a libel is a publication of the libel in L., and the publication of the libel in D. made the offense indictable in both places. (See opinion of Best, J., 184.)

In the case of *In re Buell* (3 Dillon, 122), Judge Dillon used the following language:

> Upon the authorities it seems clear that if the defendant composed a libel in the District of Columbia, with intent to have it published in a newspaper in Michigan, and it was there published by the defendant's procurement or consent, he would be liable to indictment in the latter State. (1 Russell on Crimes, 258, and cases cited; 3 Chitty Criminal Law, 872; *Rex.* vs. *Johnson*, 7 East., 68; *Commonwealth* vs.

Blanding, 3 Pick., 304). But the indictment would then be for an offense against the laws of the State of Michigan, and not of the United States.

In *People* vs. *Griffen* (2 Barbour, 427), the general term of the supreme court of New York, Welles and Selden justices, held that where threatening letters were written and mailed in Steuben County, and directed to and received by the person to whom they were addressed in Livingston County, the indictment was properly found in Livingston County.

The same ruling was made in *King* vs. *Girdwood* (1 Leach's Crown Law, 142), where a threatening letter had been sent from London to Middlesex, and was received by the prosecutor at Middlesex, and the judges were unanimously of the opinion that the defendant's trial before a Middlesex jury was proper.

See also *Esser's case* (2 East's Pleas of the Crown, 1125). In that case, where the threatening letter was sent from Kent to the prosecutor in Middlesex, it was objected that as the letter was sent by post from Kent, the fact of the sending, which constituted the offense, was committed in Kent, and the indictment would not lie in Middlesex; but Lord Mansfield held that as it was directed to the prosecutor in Middlesex, where it was delivered; that was a sending in Middlesex, for the whole was to be construed as the act of the defendant to the time of the delivery in that county.

In the case of *The People* vs. *Rathbun* (21 Wendell, 509), in a very learned opinion by Cowan, J., the supreme court of New York held that where a note, with forged indorsements, was sent by the felon by mail from one county to

an individual in another county for the purpose of obtaining credit upon it, the proper place for the trial of the prisoner was the county to which the note was sent.

The cases in which it is held that a false pretense contained in a letter mailed from one county and received in another is punishable in the county in which it was received are many and well considered. (*Regina* vs. *Jones*, 1 Den. C. C., 551; Temp. & M., 270, 1 Eng. L & Eq., 533; *Norris* vs. *State*, 25 O. S., 217; *Adams* vs. *People*, 1 Comstock, 173; *People* vs. *Adams*, 3 Denio, 190; *Regina* vs. *Leech*, 7 Cox, C. C., 100.)

The cases cited by counsel to show that the wounding of a man in one State followed by his death in another, is murder in the first State, are not in point because the blow was not intended to take effect in the second State but in the former. The death in the second State followed because the wounded man went there, not because it was part of the intentional act of the murderer to kill him there. Suppose a man sends by mail an explosive machine intending to kill the recipient in another place, is there any doubt that death caused by the explosive is murder where the explosion and death take place and that the sender may be tried there? The use of the mail in such a case gives it closer analogy to the case at bar than the case of *United States* vs. *Davis*, *supra*, but the principle is exactly the same.

In the case of *The United States* vs. *Worrall* (2 Dallas, 384), it was held that the offer of a bribe in a letter written and mailed in Pennsylvania, and received by the officer sought to be bribed in New Jersey, was a consummated act in Pennsylvania, and might there be made the basis of

a prosecution. It is not said whether in this case the crime might not also have been prosecuted under the laws of the United States in New Jersey, and therefore the case is not an authority to show that it could not be, for on the theory of the cases already cited the offer was a continuing offer from the time it was mailed in Philadelphia till it reached the officer addressed in New Jersey.

In the case of *The United States* vs. *Comerford* (25 Fed. Rep., 902), cited by counsel for the appellant, it was held that a person who deposits an obscene letter in the mail can only be punished in the district within which the letter was mailed, and not in that where it was received. This case has no bearing upon the one at bar, because the crime the defendant was there charged with was that of *depositing* a letter in the mail. What became of the letter thereafter was immaterial. Whether it was received by the person to whom it was addressed could not affect the question of the criminality of the prisoner. In the case at bar, however, no crime would have been committed had the letter upon which the complaint is founded not reached the person to whom the bribe was offered.

In the case of the *United States* vs. *Bickford* (4 Blatchf., 337), it was held by Mr. Justice Nelson and Judge Smalley that the transmission of a fraudulent application for a pension might be punished in Vermont, the State from which it was sent. There is nothing in the case as reported from which it is to be inferred that the crime might not also have been punished in the District of Columbia.

The case of the *United States* vs. *Plympton* (4 Cranch Cir. Ct. Repts., 307), it must be admitted is a case opposed to the view here urged. The opinion is very short and

unsatisfactory, and the only authority referred to is a case in which no opinion was delivered at all. It is respectfully submitted that the case is opposed to all the well-considered authorities.

In the case of *King* vs. *Williams* (2 Campb., 506), cited for the appellant, the indictment was for sending a letter with intent to provoke a challenge, and the opinion of Lord Ellenborough, that there was a sufficient publication in Middlesex, where the letter was mailed, was based on the fact that the crime would have been complete if the letter had never reached the person to whom it was directed. Moreover, there is nothing in the case which shows that the writer might not have been indicted in the place where the letter was received by the person to whom it was directed, and from the quotation made elsewhere, it will be seen that Mr. Archbold is of opinion that he might have been.

In *Perkin's Case* (2 Lewins' Crown Repts., 150 and 151), where Park, J., held that the putting of the letter containing a forged instrument into the Manchester post-office was an uttering of that instrument in the county of Lancaster, where Manchester is situated, there was nothing in the case from which it is to be inferred that the judge was of the opinion that the defendant might not also have been indicted in the place where the instrument was received.

The same remark applies to the case of *Regina* vs. *Holmes* (12 Queen's Bench Div., 23), and to *Regina* vs. *Cook*, (1 F. and F., 64).

The cases of *State* vs. *Moore* (26 N. H., 448) and *State* vs. *Wyckoff* (2 Vroom, N. J., 65) have no bearing upon

the present discussion, except to sustain the theory advanced by the United States. They were cases where it was sought to hold a person for inciting another outside of the State to commit a crime within the State. The inciting was all done outside of the State, but the act solicited was to be done in the State. It was held that the inciter could not be tried within the State, because an intelligent agent intervened between the act complained of and the principal offense, but it was said in both cases that if the person through whom the act was committed was merely an unconscious agency for doing an act for the defendant in the State while the defendant remained outside, the defendant could be tried in the State. And to illustrate the distinction, Wood, J., on page 453 of 46 New Hampshire, cites the case of *King* vs. *Brissac & Scott* (4 East., 164), which was an information for conspiracy to cheat the crown by false vouchers, the conspiracy having been concocted on the high seas. It was held that the offense was triable in Middlesex upon proof of the receipt by the commissioners of the navy of the false vouchers transmitted through the post and presented by an innocent third person. For a discussion of the New Hampshire and New Jersey cases see Wharton's Criminal Law, section 280 (8th ed.).

Counsel for appellant dwells at some length on the clause of the sixth amendment to the Constitution, giving the accused the right of trial by a jury of the State and district where the crime was committed. It is not evident how that clause can affect this discussion, which is merely for the purpose of determining where in fact the crime was

committed. It seems apparent from the authorities cited that there are some crimes that are committed in two jurisdictions, and that they may be punished in either. Such punishment would not be in violation of the clause relied on.

The act of the appellant was not confined to mailing the letter from New York, but he sent from Connecticut a box of the circulars; and the sending of the circulars was a continuation of the offer contained in his letter, and was made by him in the State of Connecticut. This is another reason for holding that the act of the appellant was within the jurisdiction of the district court of Connecticut for trial, and that section 731, Revised Statutes, has application.

Point VI.

Even if a trial could not be had in Connecticut, the prisoner should not be discharged, but should be held for trial in New York.

Section 761 directs the circuit court to dispose of the party as law and justice require. Even if, therefore, the contention of the appellant that the district court of Connecticut had no jurisdiction to try him for the offense charged is well founded, it was the duty of the circuit court to have committed him for trial in the district of New York, and if the point of jurisdiction should be regarded by this court as well taken, it should make the

order which the circuit court ought to have made, remanding the prisoner to the custody of the marshal, to be held for trial in the district of New York.

On the whole case, it is respectfully submitted that the appeal should be dismissed.

WM. H. TAFT,
Solicitor-General.

SUPREME COURT, U. S.
FILED.
APR 29 1890
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

CHARLES PALLISER, APPELLANT,
vs.
THE UNITED STATES ET AL. } No. 1538.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The following authorities, which have come to hand since the printing of the brief for the United States in this case, are submitted to the court for its consideration upon points III and VI:

POINT III.

In *State on the relation of Newell* vs. *Purdy* (36 Wisc., 213) a candidate wrote letters to the electors announcing that if elected he would not draw all his salary, but would allow it to remain in the public treasury. In a contest as to the validity of his election it was held that votes which were induced by his letters were obtained by bribery, and were void.

The case of *Oregon on the relation of Church* vs. *Dustin* (5 Oregon, 375, 378) was a proceeding under the civil code of Oregon for the purpose of having the re-

spondent adjudged ineligible for holding the office of county judge of Grant County, and have him ousted therefrom. It was alleged that the respondent induced seventy voters to vote for him upon the promise that if he was elected county judge he would pay $200 per annum out of his salary into the county treasury. The supreme court of Oregon approved the case of *Wisconsin on the relation of Newell* vs. *Purdy, supra*, and then used the following language:

> In order to constitute the rewarding or bribing of a voter by a candidate for office, we do not think it essential that the candidate should pay the price agreed upon for such vote directly into the hands of the voter in question. But the same results would follow the payment of the purchase price to a third person, or to an association or community of persons if so made by the direction of the voter, or for his use or benefit. A payment under the circumstances would be made to the agent of the voter, and in contemplation of law would be a payment to him.

The Oregon court held, however, that the demurrer was well taken, and ought to have been sustained on the ground that the petition did not show that the voters whose votes were induced by the promise were taxpayers, and so would have been pecuniarily benefited by its fulfillment.

In the case of *The State* vs. *McDonald* (106 Ind., 233), it was held that an indictment which charged that the defendant unlawfully, feloniously, and corruptly offered and promised one F., a township trustee, that if he, as such trustee, would purchase of defendant twelve sets of reading charts for the township, and pay him therefor the sum of $175, he would sign and deliver to the trustee a voucher and receipt in his favor as such trustee

on said township for $194, was good under a section of the statute which provided that whoever corruptly gave, promised or offered to any person holding any office of trust or profit under the laws of Indiana any money or valuable thing, or corruptly offered or promised to do an act beneficial to any such person to influence his action in any matter pending, or that might legally come before him, should, upon conviction thereof, be imprisoned, etc.

In discussing the case, and reaching the conclusion stated, the court say:

> Practically, and in effect, the offer by appellee is the same as if he had proposed to sell the charts to the trustee for $194, and as an inducement to the purchase had offered and promised him $19 of the amount, the township being charged for the whole.

POINT V.

The following authorities sustain the proposition that the act of Palliser was an offense triable in the district of Connecticut:

Stillman vs. *The White Rock Manufacturing Co.* (3 Woodbury & Minot, 538, 547)—where Mr. Justice Woodbury approves the decision in *People* vs. *Adams* (3 Denio, 190)—*Lindsay* vs. *The State* (38 Ohio St., 507); *Foute* vs. *The State* (15 Lea [Tenn.], 712); *Commonwealth* vs. *Smith* (11 Allen, 243); *Commonwealth* vs. *MacLoon* (101 Mass., 1); *Commonwealth* vs. *Gillespie* (7 S. & R., 469); *State* vs. *Grady* (34 Conn., 118).

Respectfully submitted.

WM. H. TAFT,
Solicitor-General.